



PLANNING BOARD

Report to Town Meeting

ARTICLE 26 FOUR UNRELATED AMENDMENT
(Petition – Melick et al)

~ SEE ATTACHMENTS ~

To see if the Town will amend Section 12.142 of the Zoning Bylaw by deleting the ~~lined-out~~ language:

12.142 A group of unrelated individuals, ~~not to exceed 4,~~
residing cooperatively in one dwelling unit. In this
instance, an accessory use as described in Sections 5.010
and 5.011 is not permitted.

Recommendation

The Planning Board voted 8-0 to recommend that Town Meeting refer this article back to the Planning Board and Board of Health for further review.

Background

This is a petition article sponsored by Daniel Melick, a 2008 graduate of the University of Massachusetts and current Town Meeting Member. This article seeks to amend the last of three definitions of family as it currently exists in the Zoning Bylaw, by removing any limitation on the number of unrelated persons who can reside together in a single dwelling unit.

Mr. Melick and others offered several arguments and assertions in support of this amendment:

- The current regulation casts too wide a net and causes enforcement against others who are not necessarily problems in the community. A recent enforcement of this regulation led to the eviction of one tenant on a property which had had no noise violations.

- Enforcement of other existing regulations, such as the Noise Bylaw, Keg Bylaw, Nuisance House Bylaw (all from the General By-Laws), parking requirements (Zoning Bylaw), and state requirements related to overcrowding (Building, Health and Fire Codes) could be used to specifically target those houses which are actually problematic to the community.
- Other options considered by the petitioners, such as raising the occupancy limit to five (5), and creation of certain districts where more people could live together, are not viable options to help reduce the issues and concerns related to parking, noise, and trash.
- Establishment of a formal Rental Registration system is uncertain and likely to meet fierce resistance from landlords, much in the way it did when it was discussed back in 2001.
- The Nuisance House Bylaw allows for enforcement action (fines) to be levied against the landlord/property owner after three violations.
- Active enforcement of the existing occupancy limitation could drive up rental prices. If forced to abide by the existing regulations, a landlord currently renting to five tenants could simply increase the rent to make up for the lost income.
- The existing regulation encourages the exclusions of some tenants from lease agreements through subletting and other means. This would eliminate the control that having a contractual agreement between the tenant and landlord provides and could interfere with the Police Department's ability to know how many persons may be residing on the premises.

Issues and concerns identified during the examination of this issue by the Planning Board and its Zoning Subcommittee include the following:

- Students often have little disposable income. They find it more affordable to live in group rental settings, often subletting illegally and further increasing density. Trapped by their financial circumstances, students are vulnerable to profit-focused landlords, some of whom may try to lease to as many tenants as possible, at relatively high rents. High densities of unrelated tenants in single family dwellings frequently generate health and safety problems.
- Experience in Amherst and numerous other communities demonstrates that high student housing demand distorts local housing markets. It places undue economic pressure on the existing supply of housing, causing the conversion of single family dwellings into multi-unit or multi-tenant group rentals.
- Property owners can achieve greater returns from student rentals than from single family ownership. This motivates the conversion of single family houses to rentals and drives up the cost of previously affordable single family housing, placing it beyond the reach of low and moderate income families.

- Converting former single family homes to rentals in any given neighborhood increases both their sale value and assessed value. This has the effect of driving up the assessed values of nearby homes in the surrounding neighborhood, increasing the purchase cost of other homes, and increasing property taxes for remaining homeowners.
- Overcrowding and group tenancies, especially those involving undergraduate students in the process of learning how to be adults, can accelerate the physical deterioration of buildings originally designed to accommodate families. This degrades the overall condition of the housing stock, and increases risks to tenant health and safety.
- While the majority of student tenants are quiet, responsible neighbors, student group tenancies tend by their nature to be a more disruptive presence, degrading the physical and social quality of neighborhoods as a result of larger numbers of cars, increased noise and activity at late hours, occasional parties, potential visits by police, and poor upkeep of buildings and grounds.
- Strong student rental housing pressure thus has four negative impacts in any community: 1) it reduces the stock of housing affordable for families, 2) it increases the burden of property taxes on existing resident families, pricing some out of the community, 3) it degrades the quality of life in neighborhoods, causing some remaining homeowners to sell out to landlords and leave, accelerating the cycle, and 4) it degrades the physical condition of housing stock, leading to problems of health and safety for tenants and others.

Existing Regulatory Tools

Amherst's existing housing regulations include:

Zoning Bylaw - <http://www.amherstma.gov/index.aspx?NID=476>

- **Four Unrelated Limit** (Definition of family) – Currently restricts the number of unrelated individuals to no more than four in a single dwelling unit.
<http://www.amherstma.gov/DocumentView.aspx?DID=266>
- **Special Permits** – Required for duplexes (except in the R-G District, where the use is permitted by right through Site Plan Review by the Planning Board), lodging or boarding houses, for multi-family dwellings, and for selected accessory lodging, boarding, or bed and breakfast uses. Specific parking requirements can be required as part of a Special Permit. Article 10 of the Zoning Bylaw requires Specific Findings that show the use is compatible with the existing neighborhood.
<http://www.amherstma.gov/DocumentView.aspx?DID=264>
- **Parking** - Section 7.000 requires a minimum of 2 parking spaces per unit, requires paved parking areas, and allows no more than two vehicles to be parked in the front setback. Screening and landscaping can be required. The location and number of parking spaces can be modified by the permit-granting body.
<http://www.amherstma.gov/DocumentView.aspx?DID=261>

General By-Laws - <http://www.amherstma.gov/DocumentView.aspx?DID=66>

- **Unlawful Noise** – A General By-Law regulating “any excessive, unnecessary, or unusually loud noise which either annoys, disturbs, injures, or endangers the reasonable quiet, comfort, repose, or the health or safety of others within the town of Amherst.”
- **Keg Licensing** - A General By-Law regulating the sale of kegs, often a fixture of student parties.
- **Nuisance House Bylaw** - A General By-Law that allows enforcement action for “gatherings”. The third offense results in a violation being issued to the property owner.

Board of Health Regulations

- **Rental Registration** - A Board of Health regulation that requires all rental properties to be registered. Each registered property is required to meet minimum health and safety standards. Not effective as written and not enforced due to limited resources.
<http://www.amherstma.gov/DocumentView.aspx?DID=1050>
- **Refuse Collection Regulations** – A Board of Health regulation which requires all property owners to have a contract with a licensed Waste Hauler and provide trash and recycling receptacles.
<http://www.amherstma.gov/DocumentView.aspx?DID=2635>

Building/Health/Fire Codes

- Enforced by personnel from the Inspections Services, Health and Fire Departments, these state codes mostly address multi-unit residences (apartment complexes, dormitories, fraternities/sororities) for which there are scheduled annual inspections. Code compliance with regard to group rental of single family dwellings is enforced primarily in response to complaints because so many of these uses are not registered or known.

Amherst’s ability to enforce its various housing regulations has also been strongly limited by years of budget cuts. The vast majority of enforcement actions, whether under zoning, the General By-Laws, or state codes, are undertaken in response to complaints. Only large multi-unit residential uses (apartment complexes, dormitories, fraternities and sororities) receive regular annual inspections.

As a result of compromises during the development of Amherst’s rental registration regulations, those regulations have little or no effect. They are not enforced, because there are not enough enforcement personnel to do so, and because there have not been sufficient resources to develop a mechanism for initially identifying all rental units in Amherst, requiring registration, and then implementing and enforcing the system.

Even given widespread violations, the four unrelated zoning definition has the effect of limiting the size of group rentals and diminishing their impact in Amherst. The limit is enforced during the permit

process for the creation or alteration of residential uses requiring a zoning permit, or in response to complaints.

The current ‘family’ definition in the Zoning Bylaw corresponds to and interacts with other local and state requirements. For example, M.G.L. Chapter 140, Section 22, defines a “lodging house” as a “house where lodgings are let to four or more persons not within second degree of kindred to the person conducting it...” Under Amherst’s Zoning Bylaw, a lodging house is only allowed in certain Zoning Districts under a Special Permit and requires the owner to reside on the premises. Taking in lodgers or boarders, or bed and breakfast guests, as a use accessory to a single family residence also becomes a Special Permit use when the number of overnight guests equals 4-6 persons.

Other Communities’ Regulations

Limiting the number of ‘unrelated’ persons residing together in any single dwelling unit is a common regulation in Massachusetts college communities and bedroom communities near colleges, with variations on the limit. A partial list of other Massachusetts communities’ occupancy limits:

| Surrounding Communities | | College Communities | |
|-------------------------|--------------------------|------------------------|-------------------------|
| Northampton | No more than 4 | Worcester (Holy Cross) | No more than 3 |
| Hadley | No more than 4 (renting) | Lowell (UMass) | No more than 3 |
| Easthampton | No more than 4 | Cambridge (Harvard) | No more than 4 |
| Shutesbury | No more than 4 | Boston (UMass) | No more than 4 students |
| South Hadley | No more than 4 | Fitchburg (Fitchburg) | No more than 5 |

Boston recently adopted regulations explicitly limiting to four the number of “full-time undergraduate students [enrolled] at a post-secondary educational institution” who can reside together in a dwelling unit (rather than unrelated persons), citing as justification many of the impacts previously noted.

Alternatives

To successfully address the impacts of student housing pressure on Amherst’s housing and its neighborhoods, every tool available to the community should be used. That includes pursuing related recommendations from Amherst’s Master Plan, which can be generally summarized as follows:

- Provide the resources necessary to increase the scope, effectiveness, and enforcement of local housing regulations, including building, fire and health codes.
- Revise and expand the rental registration system regulations, and commit the resources necessary to make it work.
- Encourage the production of significant amounts of new private student housing in selected areas.
- Impose reasonable zoning limits on the number of unrelated people (students) who can reside together in a single dwelling unit.

Public Hearing

The Planning Board held a public hearing on Article 26 on March 17, 2010. After a report from the Zoning Subcommittee, which included a report on numerous citizen comments received by the

Subcommittee, the Board heard testimony from the petitioner (Mr. Melick), from Derek Khanna, Representative of the University of Massachusetts Student Government, and from Karen Laraja, East Pleasant Street property owner supporting the article. The Board heard a report from the Zoning Subcommittee, unanimously recommending referral of the article. Testimony and letters were received from citizens opposing the article and recommending potential solutions.

After further discussion, the Board voted 8-0 to recommend that Town Meeting refer this article back to the Planning Board and Board of Health for further review. The Board emphasized its belief that Amherst needed to pursue a wider and more comprehensive strategy to address the impacts of student housing on the community, and that altering or removing the zoning limit on the number of unrelated persons who could occupy a single dwelling unit should not be undertaken until it could be assessed as part of that broader community approach.

Related Master Plan Objectives & Strategies

CHAPTER 3. LAND USE

LU.1.B Evaluate built-up areas on the basis of their character, quality, and priority, and then identify areas to:

- A. Emphasize preservation (historic areas of the downtown, village centers, and other specific districts and residential neighborhoods - key resource areas).*
- B. Emphasize adaptive reuse (particularly high quality historic areas of the downtown).*
- C. Allow a varying combination of preservation and redevelopment (other village centers, transitional or neighborhood business areas).*
- D. Allow more extensive development and redevelopment with a balance of incentives and controls (highway commercial corridors, research parks, etc.).*
- E. Encourage denser development of appropriate scale and design (village centers and downtown).*

....

New zoning, development/design regulations, and density incentives must take into account the potential impacts of strong student housing pressures, including the issue of absentee landlords. In campus-edge neighborhoods in particular, new regulations should be undertaken in tandem with other regulatory or program efforts. These could include strengthening code inspections, revising existing rental registration regulations, and encouraging alternative student housing efforts (see H.7.B, H.8, and S.3.F).

CHAPTER 4. DEMOGRAPHICS & HOUSING

OBJECTIVE H.8 – Build and sustain the Town’s capacity for regulatory oversight for Amherst’s housing stock, and pursue ways to enhance security.

Amherst residents have a right to live in housing that is safe, secure, sanitary, and well-maintained. The community’s ability to ensure this basic right depends on the resources the Town commits to inspection, enforcement and coordination of building, fire, accessibility, and health codes, and to community policing. In a community with extremely low vacancy rates, a young and transient population, and high housing demand, there will always be a temptation for property owners to cut corners, to ignore time-consuming permit procedures, to defer maintenance, and to increase the number of residents or tenants beyond safe levels. Amherst’s ability to ensure building safety code compliance and a basic sense of personal safety and security, especially in large apartment complexes, is a matter of fundamental public safety.

H.8.A Fund code inspection departments and programs adequately.

It will not matter how many innovative housing regulations and programs Amherst creates if it does not fund the personnel and resources necessary to enforce those regulations. Appropriate funding for code inspections personnel and programs in all affected Town departments is a critical, base-level investment in the safety and quality of life for Amherst residents.

OBJECTIVE H.7 – Support the creation of taxable student housing that will lessen the pressures on residential neighborhoods.

The large student population places additional pressure on the Amherst housing market. Well-designed and well-located private student housing will lessen the pressure on surrounding neighborhoods.

H.3.D Address the impacts of the student housing market in any revisions of zoning and other regulations.

New zoning, development/design regulations, and density incentives must take into account the potential impacts of strong student housing pressures, including the issues which arise as a result of absentee landlords. In campus-edge neighborhoods in particular, new regulations should be undertaken in tandem with other regulatory or program efforts. These should include:

- a. Increasing the capacity for code inspections and enforcement (see H.8 and S.3.F);*
- b. Reevaluating, clarifying, and strengthening existing zoning and rental registration regulations (see LU.1.B, LU.9 and H.7.B);*
- c. Encouraging the provision of alternative student housing (see E.4.E and H.7), and;*
- d. Working with the colleges and University to address student behavior (see S.3.G and S.7.D).*

CHAPTER 8. SERVICES & FACILITIES***OBJECTIVE S.3 – Provide high quality facilities, services, and programs that serve the needs of all the people of Amherst.***

A diverse population base necessitates diversity in the services and programs provided within the community. To provide these services, the Town needs to provide adequate personnel and material resources to keep Amherst's citizen-driven participatory government functioning.

S.3.F Increase local enforcement of Massachusetts building and safety codes and Town regulations requiring maintenance of rental housing.

The Town should improve its enforcement of health and building codes to ensure that rental housing stock is safe and complies with state and local maintenance regulations. Housing support services can be offered to residents who report unsafe housing conditions.

Representative 'Family' Definitions

Massachusetts College Communities

Northampton – Smith College [4]

FAMILY - A. Individual or two or more persons related by blood, marriage, or legal adoption living together as a single housekeeping unit and including necessary domestic help such as nurses or servants.

B. A group of individuals not related by blood, marriage, or legal adoption, but living together as a single housekeeping unit. For purposes of controlling residential density, each such group of **four individuals shall constitute a single family**.

South Hadley – Mount Holyoke College [4]

FAMILY - One or more persons occupying a dwelling unit and living as a single housekeeping unit. For purposes of the By-Law, **a family shall not exceed four (4) persons** not related by blood or marriage.

Greenfield – Greenfield Community College [4]

FAMILY - Any number of individuals related by blood or marriage or **not more than four (4) individuals not so related**, living and cooking together on the premises as a single housekeeping unit. Each additional unrelated individual over four (4) shall constitute another family.

Holyoke – Holyoke Community College [?no limit?]

FAMILY - **Any number of individuals** living and cooking together on the premises as a single housekeeping unit.

Springfield – Springfield College, American International College, Springfield Technical Community College, Western New England College, Cambridge College [3]

FAMILY - An individual or two (2) or more persons related by genetics, adoption or marriage, living and cooking together as a single housekeeping unit or a group of **three (3) or fewer** persons who are or who are not related by genetics, adoption or marriage, living and cooking together as a single housekeeping unit.

Westfield - Westfield State College [?no unrelated?]

FAMILY - **Any number of persons within the second degree of kindred** living and cooking together as a single housekeeping unit. The word "Family" as used herein includes residents of a residential rehabilitation center and foster children.'

Pittsfield – Berkshire Community College [8]

FAMILY - One or more persons occupying a single dwelling unit, provided that unless all members are related by blood, marriage, or adoption, **no such family shall contain over eight persons**, but further provided that domestic servants employed on the premises may be housed on the premises without being counted as a family or families.

Williamstown – Williams College [no limit?]

FAMILY -- **Any number of individuals** living and cooking together as a single housekeeping unit, plus no more than two domestic employees, boarders or lodgers.

Worcester – College of the Holy Cross, Worcester Polytechnic Institute, UMass Medical Center, Becker College [3]

FAMILY - One (1) or more persons occupying a dwelling unit and living as a single housekeeping unit, **not including a group of more than three (3) persons** who are not within the second degree of kinship.

Accessory Uses:

8. The renting of rooms by a resident family may be allowed in a Residence District to not more than two (2) non-transients provided that **not more than three (3) persons, who are not within the second degree of kinship**, are living in a dwelling unit.

Lowell – UMass Lowell, Middlesex Community College, Lincoln Technical Institute [3]

FAMILY - An individual, or two (2) or more individuals related by blood, marriage, or adoption living together, or **not more than three (3) individuals** not related by blood, marriage, or adoption living together.

Boston – UMass/Boston, Northeastern Univ., Suffolk Univ., Boston, Univ., Boston College, many others

(19) "Family", one person or two or more persons related by blood, marriage, adoption, or other analogous family union occupying a dwelling unit and living as a single non-profit housekeeping unit, provided that **a group of five or more persons who are enrolled as full-time, undergraduate students at a postsecondary educational institution shall not be deemed to constitute a family**. A group residence, limited, as defined in clause (22B) of this Section 2-1 shall be deemed a family. (As amended on February 22, 1991, March 13, 2008, and March 12, 2010)

Cambridge – Harvard University, Massachusetts Institute of Technology, Cambridge College, etc. [3]

FAMILY - One or more persons occupying a dwelling unit and living as a single nonprofit housekeeping unit; provided that **a group of four or more persons who are not within the second degree of kinship shall not be deemed to constitute a family**. [i.e., up to three unrelated persons is a family]

Cambridge (cont.)

Notwithstanding the definition in the preceding paragraph, a family shall be deemed to include four or more persons not within the second degree of kinship occupying a dwelling unit and living as a single, nonprofit housekeeping unit, if said occupants are handicapped persons as defined in Title VIII of the Civil Rights Act of 1968, as amended by the "Fair Housing Amendments Act of 1988." Such unrelated individuals shall have the right to occupy a dwelling unit in the same manner and to the same extent as any family in the first paragraph of this definition.

Fitchburg – Fitchburg State College, Mount Wachusett Community College [4]

FAMILY - A person or number of persons occupying a dwelling unit and living as a single housekeeping unit, provided that a group of **five or more** unrelated persons shall not be deemed a "family" where not related by blood, marriage or adoption, including wards of the state. .

Wellesley- Wellesley College, Babson College [3]

FAMILY - (A) One (1) or more persons related by blood, adoption or marriage and not more than two (2) additional persons all residing together as a single housekeeping unit; (B) A number of persons but **not exceeding three (3)** residing together as a single housekeeping unit where such persons are not related to one another by blood, adoption or marriage.

Brookline – Newbury College, Holy Cross Hellenic College, etc. [4]

FAMILY - One or more persons, including domestic employees, occupying a dwelling unit and living as a single, non-profit housekeeping unit; provided, that **a group of five or more persons who are not within the second degree of kinship**, as defined by civil law, shall not be deemed to constitute a family.

A Connecticut College Town

Mansfield, CT – Home of UConn (student pop. ≈ 24,000) [3]

Family. One or more persons who live together and maintain a common household, related by blood, marriage, or adoption. A family may also include domestic help and gratuitous guests. In addition, **a family may include not more than three persons who are not related** by blood, marriage or adoption.

Surrounding ['Bedroom'] Communities

Hadley [4]

RESIDENCE DISTRICTS, PERMITTED USES - Renting of rooms or furnishing or board for periods exceeding fourteen (14) days in duration **for not more than (4) persons in a dwelling regularly occupied for residential purposes** and which is not a Bed-And-Breakfast Facility.

Shutesbury [4]

FAMILY - One or more persons (**not to exceed four unrelated by blood, marriage, or adoption**) occupying a dwelling and living as a single housekeeping unit.

Sunderland [5]

FAMILY - An individual or two (2) or more persons related by blood or marriage, **or a group of not more than five (5) persons not legally related, living together as a single housekeeping unit.** Any unrelated individual over five (5) shall constitute another family. [Amended 11-29-1999 STM, Art. 1]

Belchertown [?no limit?]

DWELLING UNIT - A structure containing, under one roof and within exterior abutting walls, one or more rooms providing **complete living facilities for one or more individuals**, including equipment for cooking or provisions for same, and including room or rooms for living, sleeping, eating and sanitation.

Leverett [?no limit?]

DWELLING UNIT - Dwelling Unit shall mean a building or part of a building occupied or suitable for occupancy as a residence and arranged for the use of **one or more individuals living as a single housekeeping unit** with its own cooking, living, sanitary and sleeping facilities.

Deerfield [6?]

FAMILY - Family shall mean a number of individuals living and cooking together on the premises as a single unit.

2243. Boarders in Single-Family Dwelling. The renting of rooms and/or furnishing of board to not more than two persons in a single-family dwelling by the owner/occupant thereof shall be a permitted accessory use. **The renting of rooms and/or furnishing of board to more than two persons, but not more than six (6) persons, in a single-family dwelling by the owner/occupant thereof shall be deemed a boarding house** subject to the provisions of Section 2230, herein.

Whately [4]

FAMILY -- An individual residing in one dwelling unit, a group of persons related by blood, marriage or adoption **or a group of not more than four individuals not so related residing in one dwelling unit.**

Hatfield [3]

FAMILY - Any number of persons related by blood, marriage, adoption, or guardianship, and **not more than three persons not so related, living together as a single housekeeping unit.**

Easthampton [4]

FAMILY - A number of individuals related by blood, marriage and/or adoption **or a group of unrelated individuals not to exceed four (4) who are occupying a dwelling unit and living as a single nonprofit housekeeping unit.** This definition, however, does not apply to non-related disabled persons as defined by any applicable federal and/or state law and/or regulations.

Southampton [3]

FAMILY – Any number of persons related by blood or marriage living in the same dwelling, or **not more than three (3) persons unrelated by blood or marriage living together** as a single housekeeping unit.

Williamsburg [3]

DWELLING, SINGLE-FAMILY - A detached building designed for the use of one household, including one or more persons living as a family, **and wherein not more than three boarders are sheltered and/or fed for compensation.**

Sent: Wed 3/17/2010 2:53 PM
From: Joel Bard [JBard@k-plaw.com]
To: Tucker, Jonathan; Bagg, Jeffery
Cc: Shaffer, Larry
Re: FW: Amherst Citizen Zoning Petition (question)

Hi Jonathan and Jeff:

You have requested an opinion regarding the legality of the definition of “family” set forth in Section 12.14 of the Zoning Bylaw. In my opinion, Section 12.14 of the Zoning Bylaw does not infringe on any right protected by the United States or Massachusetts Constitutions. In my further opinion, a group of unrelated individuals have no constitutionally protected right to live together.

Section 12.14 of the Zoning Bylaw defines “family” as:

- 12.140 An individual residing in one dwelling unit; or
- 12.141 A group of persons related by marriage, blood and/or adoption residing together in one dwelling unit; or
- 12.142 A group of unrelated individuals, not to exceed 4, residing cooperatively in one dwelling unit.
In this instance, an accessory use as described in Sections 5.010 and 5.011 is not permitted.

You have informed me that a group of citizens has filed a petition to amend Section 12.142 to delete the words “not to exceed 4,” which would eliminate any limitation on the number of unrelated individuals that can share one dwelling unit.

In Village of Belle Terre v. Boraas, 416 U.S. 1 (1974) (“Belle Terre”), the United States Supreme Court upheld a zoning ordinance limiting the occupancy of single-family dwellings to no more than two unrelated people. A group of six unrelated students living together challenged the ordinance on equal protection grounds, among other things. In holding that the ordinance was constitutional, the Court found that the ordinance did not involve the deprivation of any fundamental right guaranteed by the Constitution and bore a rational relationship to a permissible state objective (“A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs.”).

Three years later, in Moore v. City of East Cleveland, 431 U.S. 494 (1977) (“Moore”), the U.S. Supreme Court distinguished its holding in Belle Terre when it struck a zoning ordinance which prohibited certain non-nuclear family members from living together (in the Moore case, a grandmother could not live in a house with her son and two grandsons, who were cousins but not brothers). In upholding the right of non-nuclear family members to live together, the Moore Court distinguished the case from Belle Terre because the ordinance in Belle Terre affected only unrelated individuals while the East Cleveland ordinance targeted certain categories of relatives who may live together and declared that others may not. Even though the ordinance was aimed at goals which the Court found were legitimate (preventing overcrowding, minimizing traffic and parking congestion, and avoiding undue financial burden on the city’s school system), the Court concluded that the ordinance served these interests marginally, at best, and improperly intruded on protected choices concerning family living arrangements. See also City of Worcester v. Bonaventura, 56 Mass.App.Ct. 166 (2002) (holding that “lodging house” ordinance which prevents condominium owners from renting to four or more unrelated college students is not unconstitutionally vague); Commonwealth v. Jaffee, 398 Mass. 50 (1986) (holding that use of house by eight unrelated adults who evidence a complete lack of communal living—including separate kitchens, mailboxes and leases—does not fall within a reasonable judicial construction of “one family”).

In the email to me, Jeff noted that in 2006 the Attorney General's Office rejected an amendment to the definition of "family" in the Town of Milford's Zoning Bylaw. The proposed amendment to the Milford Zoning Bylaw would have changed the definition of "family" to expressly exclude "a group of more than three (3) persons who are not within the second degree of kinship." The Attorney General disapproved the Bylaw amendment because the Bylaw's restriction to three of the number of persons in a household who are not within the second degree of kinship would infringe constitutionally guaranteed family relations rights. In so doing, the Attorney General cited Moore v. City of East Cleveland for the proposition that the Fourteenth Amendment's Due Process Clause protects an extended family's choice to live together. The Milford case highlights the key difference in the analysis—whether a zoning bylaw attempts to limit the number of related versus unrelated persons living together. While attempts to limit the former violate constitutionally protected liberty interests, the latter does not.

As indicated above, the standard of review in these cases requires that the zoning regulation bear a rational relationship to permissible governmental objectives. In my opinion, limiting the number of unrelated individuals who may live together to four, as the Zoning Bylaw currently does, would further a legitimate governmental objective of minimizing concerns related to noise, traffic and overcrowding, and would not implicate matters of "family choice" protected by state and federal law.

Finally, I saw from the information you sent me that you have prepare two "alternative" versions of the Section 12.14 "family" definition, one which sets forth characteristics for being considered a "functional family unit," and one which specifically targets groups of college students and is modeled after the Boston Zoning Code. Although you did not ask me to review these proposed amendments, I would caution you against getting too specific in distinguishing between certain groups of unrelated individuals who may live together and those who may not. Targeting certain groups, such as undergraduate students, but not other similar groups, such as graduate students, for example, could, in my opinion, expose the Bylaw to an equal protection challenge. If you would like me to review either of these alternative versions in greater detail, please let me know.

If you have any further questions regarding this matter, please do not hesitate to contact me.

Joel

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